United States Department of Labor
Employees' Compensation Appeals Board

M.D., Appellant	)	
and	)	**Docket No. 07-1233**
	)	**Issued: October 3, 2007**
DEPARTMENT OF THE ARMY, CORPS OF ENGINEERS, Dilliner, PA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 4, 2007 appellant filed a timely appeal from the March 20, 2007 decision of the Office of Workers' Compensation Programs denying his claim for a schedule award for a loss of hearing. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant is entitled to a schedule award for his employment-related hearing loss.

FACTUAL HISTORY

On October 30, 2006 appellant, a 58-year-old lock and dam operator and diver, filed an occupational disease claim alleging that his hearing had diminished as a result of his underwater repair duties. He stated that he was exposed to noise levels from equipment such as jack hammers and air drills that often exceeded 100 decibels and that he was unable to use ear

protection underwater because of pressure differences. Appellant stated that his hearing loss was detected during mandatory medical examinations. He did not stop work.

The employing establishment provided the results of appellant's audiograms from 1986 to 2006 and his position description. In a memorandum dated November 8, 2006, Supervisor David Sneberger stated that appellant was exposed to excessive noise and excessive pressure on the eardrums while performing underwater maintenance dives as deep as 60 feet. He was exposed to equipment with decibel ratings between 85 and 100 for as long as four hours at a time. Mr. Sneberger stated that, as there was no known method of underwater hearing protection, appellant was exposed to loud noises without the benefit of hearing protection on a regular basis. Appellant's 2006 audiogram results showed his hearing threshold as 25, 10, 10 and 45 decibels in his left ear and 20, 15, 10 and 45 decibels in his right ear, respectively, for 500, 1,000, 2,000 and 3,000 cycles per second (cps).

On January 5, 2007 the Office referred appellant for a second opinion examination to clarify the cause and extent of his hearing loss. On February 6, 2007 Dr. Lester Shapiro, a Board-certified otolaryngologist, stated that appellant had a five-year history of hearing difficulty and tinnitus. He noted that appellant had been subject to noise exposure, sometimes without hearing protection, since 1965. Dr. Shapiro found that appellant's first hearing test, in 1986, revealed essentially normal hearing in both ears. He stated that the results of the audiometric examination he conducted showed essentially normal hearing up to 2,000 cps and sloping moderate high frequency sensorineural hearing loss from 3,000 to 8,000 cps. Dr. Shapiro stated that there was almost no change in hearing sensitivity for low frequencies and a 40 decibel decrease in hearing sensitivity for high frequencies since the 1986 audiogram. He found this loss to be greater than would be expected from presbycusis and that the intensity and duration of appellant's work exposure was sufficient to cause the loss. Dr. Shapiro opined that appellant's hearing loss was due to his federal employment. His physical examination revealed no abnormalities, no history of Meniere's disease and no evidence of acoustic neuroma. In the audiometric examination, speech reception thresholds were consistent with pure tone responses in both hearing and speech discrimination testing at 60 decibels, was 92 percent in the right ear and 96 percent in the left ear. Dr. Shapiro recommended a hearing aid evaluation to maximize speech understanding in quiet and noisy environments.

On February 12, 2007 the Office provided Dr. Shapiro's report to the Office medical adviser for an opinion on whether appellant's hearing loss was employment related and whether appellant was entitled to a schedule award. On February 20, 2007 the Office medical adviser agreed that appellant's hearing loss was related to his federal employment and that his date of maximum medical improvement was February 6, 2007. The February 6, 2007 audiogram showed losses of 20, 15, 5 and 45 decibels in the right ear and 20, 10, 10 and 45 decibels in the left ear for the frequencies of 500, 1,000, 2,000 and 3,000 cps. Based on this data and the procedures outlined in the Office's protocols, the Office medical adviser found zero percent hearing loss in each ear and zero percent binaural hearing loss.

By decision dated March 20, 2007, the Office accepted appellant's claim for an employment-related hearing loss but denied his claim for a schedule award, finding that the hearing loss was not severe enough to be ratable.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act and its implementing regulation set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use of scheduled members or functions of the body.[1] However, the Act does not specify the manner in which the percentage of loss is to be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[2]

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.[3] Using the frequencies of 500, 1,000, 2,000 and 3,000 cps, the losses at each frequency are added up and averaged.[4] Then, the fence of 25 decibels is deducted because, as the A.M.A., *Guides* points out, losses below 25 decibels result in no impairment in the ability to hear everyday speech under everyday conditions.[5] The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.[6] The binaural loss is determined by calculating the loss in each ear using the formula for monaural loss; the lesser loss is multiplied by five, then added to the greater loss and the total is divided by six to arrive at the amount of the binaural hearing loss.[7] The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.[8]

ANALYSIS

The Office found that appellant sustained hearing loss causally related to his federal employment duties. Therefore the issue to be resolved is whether his hearing loss is severe enough to be ratable, thereby, entitling him to a schedule award.

After receiving Dr. Shapiro's second opinion report, the Office properly referred appellant's record to the Office medical adviser for an opinion and application of the Office's protocols for computing the percentage of hearing loss. The Office medical adviser added the right ear decibel losses recorded at 500, 1,000, 2,000 and 3,000 cps, which were 20, 15, 5 and 45 decibels respectively, for a total of 85 decibels. When divided by 4, the result is an average

[1] 5 U.S.C. §§ 8101-8193; 20 C.F.R. § 10.404.

[2] 20 C.F.R. § 10.404.

[3] A.M.A., *Guides* at 226-51 (5th ed., 2001).

[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *Donald Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted, (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

hearing loss of 21.25 decibels. The average loss was then reduced by the "fence" of 25 decibels to equal 0, which, when multiplied by the established factor of 1.5 results in a 0 percent monaural hearing loss for the right ear. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed levels of 20, 10, 10 and 45, respectively, for a total of 85 decibels. When divided by 4, the result is an average hearing loss of 21.25 decibels. The average loss was then reduced by the "fence" of 25 decibels to equal 0, which, when multiplied by the established factor of 1.5 results in a 0 percent monaural hearing loss for the left ear. Consequently, the evidence of record does not establish that appellant has a ratable hearing loss for either ear. The Board finds that the Office properly determined that appellant was not currently entitled to a schedule award.

CONCLUSION

The Board finds that appellant is not entitled to a schedule award for his employment-related hearing loss at this time, as it is not severe enough to be ratable.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 20, 2007 is affirmed.

Issued: October 3, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board